

IN RE: Proceeding to Address Public Interest Pay) AMENDED ORDER
Telephones in South Carolina.) ADDRESSING PUBLIC
) INTEREST PAYPHONES
) IN SOUTH CAROLINA
)

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Commission’s decision to initiate a proceeding to address public interest payphones in South Carolina. On January 12, 2004, the Commission issued a Public Notice that advised interested parties of the above-captioned proceeding and the

manner and time in which to file pleadings.¹ The Commission set a hearing for Wednesday, May 18, 2005. Several parties intervened in the proceeding, filed extensive direct and supplemental testimony, and participated at the hearing.²

BACKGROUND

A “public interest payphone” is any payphone that “(1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace.”³ Section 276 of the Communications Act of 1934, as amended, 47 U.S.C. § 276(b)(2) (2003), requires the Federal Communications Commission (“FCC”) to adopt rules and regulations necessary to ensure that “public interest payphones are supported fairly and equitably.” The FCC delegated this responsibility to the states by requiring states to “take ...measures to ensure that payphones serving important public interests will continue to exist.”⁴ The FCC also granted the states discretion in selecting mechanisms to fund support for public interest payphones.⁵

As part of its obligation to determine whether public interest payphones are needed in South Carolina, the Commission instituted this proceeding and identified several issues for public comment. These issues include whether there is a need for

¹ Notice of Filing and Hearing (January 12, 2004).

² The intervening parties include: South Carolina Telephone Coalition, BellSouth Telecommunications, Inc., Verizon Communications, Inc., United Telephone Company of the Carolinas and Sprint Payphone Services, Inc., the South Carolina Public Communications Association, The Women’s Shelter, and the Office of Regulatory Staff.

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996* (Report and Order), 11 FCC Rcd 20541, ¶ 282 (1996) (the “Payphone Report and Order”) (subsequent history omitted).

⁴ See *Id.* ¶¶ 281-282, 285.

⁵ See *Id.*, ¶ 283.

public interest payphones, what criteria are used to determine site qualifications for a public interest payphone (i.e. what locations qualify), who provides service to public interest payphones, and how funding for public interest payphones will be provided.⁶

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Although a potential need exists in South Carolina to address payphones that serve the public interest, it is impossible for the Commission to imagine each scenario that may warrant the installation of a public interest payphone at a particular location or the magnitude of the demand.⁷ Nevertheless, this potential need is demonstrated by several factors, including diminished availability of payphones in the state due to BellSouth Public Communications, Inc.'s ("BSPC") withdrawal from the payphone market, lack of payphones in locations where there is little profitability, and the high cost of cell phones as well as the lack of total cell tower coverage in rural areas.

To address these indicators, first, the record shows that the number of payphones in the State has declined. The Commission recently granted a petition by BSPC to withdraw from the payphone market. At the time of BSPC's exit, it was the largest provider of payphones in the State.⁸ As of BSPC's departure from the market, only 33% of its payphones in its nine-state region transitioned to a new payphone provider.⁹ Second, the testimony of the participants demonstrates that payphone providers are

⁶ See Notice of Filing and Hearing (January 12, 2004).

⁷ Pay Telephone Access Service rates have been lowered, which should have the effect of promoting the placement of pay telephones in more locations.

⁸ Testimony indicated that BellSouth provided over three quarters of all payphones in the State. (Hearing testimony of Walter Rice at 133 (May 18, 2005)).

⁹ Prepared Supplemental Testimony of J. Ruoff at 4 (May 3, 2005) (citing a letter submitted to the Commission on January 28, 2004, in Docket No. 2003-77-C).

unlikely to provide service in areas that generate little or no profit.¹⁰ Third, while the record indicates that the availability of cellular coverage diminishes the number of payphones needed in the State, the availability of cell phones may not, however, eliminate the need for public interest payphones, particularly in rural areas and areas where there is a high concentration of low income individuals.

Additionally, although pre-paid or Lifeline services are helpful in achieving the State's universal service goals, they many not address the needs of those in transition, those who are homeless, or those who need access to phones outside of their homes. For example, residential lines are of limited use to someone whose car breaks down on a public highway, someone who needs immediate medical attention after being injured in a public park, eyewitnesses who want to timely report a crime they see on a street, or citizens that want to alert authorities of potential threats to homeland security. As a result, these circumstances may indicate a need for public access to payphones at specific locations.

Therefore, the Commission finds that, although none have presently been identified, situations may develop that warrant the installation of payphones to serve the public interest in the State. The Commission recognizes that issues exist concerning: the criteria used to designate public interest payphones, who should provide the service, and how public interest payphones should be funded. Consequently, the Commission adopts a case by case approach for the placement of public interest payphones.¹¹ If the

¹⁰ Hearing testimony of Walter Rice at 139-40 (May 18, 2005).

¹¹ While several of the parties asserted that a PIP program was not needed in South Carolina, most agreed that if one was established, the best approach was a case-by-case approach. *See* Prepared Direct Testimony of Terry Dye at 5-6 (February 6, 2004), Prepared Surrebuttal Testimony of John Mitus at 5 (February 17,

Commission receives a request for a public interest payphone, it will first look to existing payphone providers to work informally on the request. If necessary, the Commission will establish procedures to govern applications for public interest payphones at identified locations and establish the specific criteria to be used in evaluating such applications. Those procedures would be similar to the case by case approach used by Kentucky and Indiana.

Further, the Commission concludes that it is unnecessary to create a specific funding mechanism at this time. Both Kentucky and Indiana established public interest payphone programs and deferred implementing formal funding mechanisms. In both instances, the states decided to work informally with payphone providers to place payphones in requested locations.¹² The Commission believes that this informal approach will also work in South Carolina. However, if a designated public interest payphone location fails to receive service using such an informal process, the Commission may revisit the provisioning and funding questions.

In the meantime, the Commission is addressing guidelines for universal service funding and related issues in other proceedings that might impact the number of public interest payphones and the cost of those phones. If public interest payphone funding becomes necessary, the Commission can address funding at that time for the specific location based on specific cost and contribution data. Moreover, the Commission can use such data to develop a more permanent funding mechanism in the future, if necessary.

2004), Prepared Surrebuttal Testimony of James McDaniel at 5 (April 20, 2005), and Prepared Supplemental Direct Testimony of Kathy Blake at 10 (May 4, 2005).

¹² *Investigation into the Need for Public Interest Payphones in Kentucky*, Kentucky Public Service Commission Case No. 2003-00492 at 4-5 (August 23, 2004).

ORDER

The Commission hereby establishes a case-by-case approach, as described above, in the event that it needs to address a request for public interest payphones serving the public policy objectives of health, safety, or welfare.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



C. Robert Moseley, Vice Chairman

(SEAL)